

With this in mind, the Commission can concentrate on adjusting its radio/television cross-ownership rule to safeguard only the most egregious cases of market concentration that will not be prohibited by the Commission's other ownership rules. The simplest approach to this potential harm is to utilize a modified version of the 50% screening mechanism the Commission uses to flag radio transactions that may create excessive concentration.⁷³ Under this arrangement, transactions involving the creation of a radio/television combination that would control 50% or more of the combined television and radio advertising revenue in given DMA would be subject to heightened scrutiny.

In the case of radio/television combinations, the DMA is the appropriate market in which to gauge concentration of advertising revenue because it dovetails with the geographic scope of the duopoly rules. Although many, if not most, radio stations will not place a service-grade contour over the entirety of the DMA in which it is located, television/radio combinations are likely to be constructed to cover as much of a DMA as possible to take maximum advantage of the efficiencies created by the overlapping service areas of the radio and television stations.

This screening approach will eliminate the potentially arbitrary results that application of the current rules could create. By using a revenue basis to trigger increased scrutiny rather than a station number or independent voice test, the Commission will get to the heart of any given television/radio combination's potential

⁷³ See, e.g., *The Application of Voice in the Wilderness Broadcasting, Inc., Hearing Designation Order*, MB Docket No. 02-272, FCC 02-246 (rel. September 05, 2002); *Great Empire Broadcasting* 14 FCC Rcd at 11148. See also Public Notice, Broadcast Applications, Rep. No. 24303 (Aug. 12, 1998).

market power in the broadcast advertising market. Moreover, the Commission already has experience in assessing the likelihood of competitive harm that a combination controlling 50% or more of a market's advertising revenue could cause through its application of the screening mechanism in the radio context.

CONCLUSION

Paxson commends the Commission on its efforts to undertake a comprehensive review of its rapidly aging broadcast ownership rules. Paxson also understands the Commission's desire to "think outside the box" to achieve unified and consistent broadcast ownership rules. In this case, however, *all that is necessary to satisfy Congress's goals and 202(h) of the Communications Act is the adjustments to the rules suggested herein.* An immediate increase in the national ownership cap followed by a slow phase-out of the rule will allow the Commission to comply with the D.C. Circuit's orders while maintaining a contingency if excessive concentration begins to damage the public interest. Retention of the UHF discount will allow the Commission to continue to foster the birth of competitive television broadcast networks while taking due note of the physical limitations of UHF signals and the economic challenges those limitations create. Liberalization of the duopoly rules is the logical next deregulatory step given the *lack of any negative market effects created by the current rules.* Finally, elimination of the television/newspaper and television/radio cross ownership rules will remove arbitrary ownership limitations that do little other than prohibit broadcasters from realizing the economies inherent in multi-media operations while depriving the public of the improved programming product that *those efficiencies would make possible.* Each of these changes would have the effect of placing market forces and competition, rather

than government regulation, in its proper place as the prime regulator of local media.
Section 202(h) of the Communications Act and the public interest demand no less.

Respectfully Submitted,

PAXSON COMMUNICATIONS CORPORATION

By: /s/ William L. Watson
William L. Watson
Paxson Communications Corporation
601 Clearwater Park Road
West Palm Beach, FL 33401

Dated: January 2, 2003

UHF DISCOUNT

RECORD SUBMISSIONS

OF

CAPITOL BROADCASTING

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, NC 27605

DIANNE SMITH
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May 8, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: EX PARTE NOTICE - MB Docket No. 02-277, MM Docket No. 01-235, 01-317,
00-244

Dear Ms. Dortch:

On May 7, 2003, on behalf of Capitol Broadcasting Company, Inc., I met with Jordan Goldstein of Commissioner Michael Copps' office regarding the UHF discount and other general matters related to the above proceedings.

If there are questions relating to this filing, please contact the undersigned.

Best regards,

/s/ Dianne Smith

Dianne Smith
Special Projects Counsel

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, NC 27605

JIM GOODMON
President & CEO
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email: jgoodmon@cbc-raleigh.com

April 24, 2003

VIA FACSIMILE

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

RE: 2002 Biennial Review - Review of the Commission's Broadcast
Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the
Telecommunications Act of 1996 (MB Docket No. 02-277) and Related
Proceedings (MM Docket No. 01-235, MM Docket No. 01-317, MM
Docket No. 00-244)

Dear Chairman Powell:

On behalf of Capitol Broadcasting Company, Inc. (CBC) and as its third generation chief executive officer, I write to you with immense concern for the public and for the broadcasting community.

This has been a week of mixed emotions. First, it was with great pride that we filed comments in the digital television proceeding on Monday. Second, on Tuesday, it was with confusion and alarm that I read the letter to you from Robert Decherd of Belo Corp. (*See Appendix A.*)

The most disturbing line occurs when Mr. Decherd suggests raising the national television cap to 45% "in return for favorable Commission action on the 'right to reject' and affiliation agreement assignability matters raised in the pending NASA petition." I am perplexed. What does this mean? I am not a lawyer, but aren't these separate issues? Doesn't each need to be reviewed on its own merits or is this "let's make a deal?" I mean no disrespect to Mr. Decherd, you, or the Commission, but this ownership review will change what citizens in every community in America receive on their local news, sports, weather, and public affairs programs, as well as how they receive it, and it will determine the kind of national network programming that ultimately is available in their homes. This debate should not take place with deal making and concessions between a few major media companies and a government agency with appointed, not elected, officials.

During the course of this proceeding, a number of other occurrences have stunned, bewildered, disappointed, and disturbed me, including: the total disregard of the impact of the digital transition on these rules; the lack of discussion about the UHF discount, resulting in our current 35% cap actually being a 70% cap with one group owner already reaching

Page 2
The Honorable Michael K. Powell
April 24, 2003

over 61% of the nation's TV households; the mandatory June 2nd rush to judgment date; the reliance on twelve arguably incomplete surveys; the focus on corporate economic interests, with a general disrespect for the public interest, and on nationalism, not localism; the stringent reading of a court case that three times expresses that the court leaves room for the Commission to justify the national cap rule; and the disregard of the public's overwhelming opposition to relaxing the rules.

We at CBC support the public. We believe that more voices are better. We are not willing to trade or compromise the public's future interest for concessions that may benefit us financially.

We have listened to the public – the message is clear – preserve localism and diversity in ownership.

Best regards,

/s/ James F. Goodman

James F. Goodman

cc:

The Honorable Kathleen Q. Abernathy

The Honorable Michael J. Copps

The Honorable Kevin J. Martin

The Honorable Jonathan S. Adelstein

W. Kenneth Ferree, Chief of the Media Bureau

U.S. Congress:

Members of the Senate Commerce, Science and Transportation Committee (via hand delivery)

Members of the House Energy and Commerce Committee (via hand delivery)

Nancy Victory, Assistant Secretary, Department of Commerce and National Telecommunications and Information Administration

EX PARTE OR LATE FILED

Before
Federal Communications Commission
Durham, North Carolina

Testimony of
James F. Goodman
On Media Concentration

March 31, 2003

ORIGINAL

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APR - 9 2003

Federal Communications Commission
Office of the Secretary

MB Docket
02-277
01-235
01-317
00-244

Welcome to North Carolina and the Research Triangle Area. I am Jim Goodman, President and Chief Executive Officer of Capitol Broadcasting Company, Inc., which owns and operates five television stations and one radio station here in North Carolina. I am the third generation president of Capitol Broadcasting, and I am proud that my son, Jimmy, represents the fourth generation... (grandson Michael would be working with me if it did not violate the child labor laws . . . he is 5 ...)

Broadcast technology has changed and there are many NATIONAL cable and satellite channels>>> but one thing is unchanged >>> granting broadcast licenses in the public interest and allocating them by local community with the goal of *localism* remains the law of the land. *No technology, marketplace changes, statutes, agency regulations or court cases have supplanted, repealed, or vacated localism. Localism is as necessary to the public interest* today as it was in 1937 when we received our first broadcast license. Through *localism*, we reflect the standards of our individual communities –Raleigh-Durham, Charlotte and Wilmington.

Today localism and, in turn, community standards are under direct fire from those advocating nationalism and comorate objectives. I am here today to respectfully urge the Commission to retain the national television ownership cap and revise the rules as to how

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stations ~~are~~ counted toward the cap. Based on the fact that more owners provide more diverse voices and real local competition, I also urge the Commission to retain the radio/TV cross-ownership and newspaperbroadcast cross-ownership rules and to study the impact of duopolies and radio consolidation on local communities.

* * * * *

Maintaining (*or even reducing*) the national 35% ownership cap is **essential** to localism. If the cap is increased, one thing is certain – we will see the giant conglomerates and their investment bankers lead a flurry of buying and selling. Billions will change hands... Remember that deregulation reduced the number of radio station owners by almost one-third. Will television experience the same? What about our **local** communities? What about localism? I don't have a crystal ball; but let's look at what we already know.

- **First, there is NO adequate substitute for local broadcast television.**

Broadcast television is a different medium – we are different from cable and satellite ...

#1 Broadcasting (unlike cable and satellite) is free and thus available to the nation's poorest and the nation's richest whether on a 13-inch black and white or a 56-inch HD set.

#2 Broadcasting is the primary source for local emergency news and weather information.

#3 Broadcasting is uniquely local with licenses granted by local community.

#4 Broadcasters are actually trustees of the public airwaves – we **are** required by law to serve our local community and to operate our stations in the public interest.

The deregulation advocates argue that because there are hundreds of national cable channels and hundreds of national satellite channels and thousands of national internet sites that the broadcast ownership rules are antiquated... they say that the marketplace has changed. But has it? Not really..

The national cable and satellite networks are not a substitute for local broadcasting...

Local channels remain the dominant medium in the marketplace, because there is no adequate substitute for local television. The public votes with the ratings, and localism is still winning in the polls. And although there **are** new media outlets since my grandfather's day, the voices in the market **are** actually the **same** voices with the broadcast networks owning *three* of the four most popular cable news channels and many of the top Internet sites.

- **Second, current media consolidation is ALREADY undermining localism and the evaluation of community standards.**

Localism and the reflection of community standards **are indispensable** components of the public interest, which remains the foundation of broadcasting law. As the networks and other large groups have been allowed to own more and more local stations, the local voice has become a long distance call and community standards have been replaced with corporate economic efficiencies. Of particular concern is the ownership of local stations by the networks. Network owned television stations carry the programs they are ordered to carry by

the network...there is no local decision-making involved. *If the fox owns the henhouse, what prevents the fox from ravaging the hens?*

I would like to quickly tell you about our local FOX affiliate...WRAZ. At WRAZ, we decided that we would draw the line on reality programming when the show demeaned marriage and/or family. We therefore did not broadcast, "Who Wants to Marry a Millionaire?" and Married By America...we did not broadcast those programs because it was our editorial opinion that these shows did not reflect the standards of our *local* community. I am not saying here that we made the right decision . . .just that we made a decision. Most network programming is aired without preview by local stations. The right to reject or preempt network programming is a right we take seriously.

If the fox owns the hen, can the hen redly reject the fox?

Other specific attacks on localism resulting from media consolidation include central casting, plug and play local news and group programming – all decisions made at the corporate level, often hundreds of miles from the local market, and reflecting corporate policy, not public policy.

- **Third. media consolidation is also affecting the ability of local station owners and small groups to compete.**

The network and large group owners' negotiating leverage for syndicated programming and satellite and cable multichannel retransmission severely impacts the small owner. Twice recently we have been unable to bid for popular syndicated programming because a group had purchased it for all of its markets. We ask the Commission to assess whether a vertically integrated syndicated programming provider should be required to offer its programming on a market-

by-market bid basis. We also ask the Commission to look at the tying arrangements related to multichannel negotiations with cable owners by the networks.

Finally, we ask the Commission to eliminate the UHF 50% discount and to count duopolies. There is no longer a valid reason for the discount. Today's 35% caps is really a 70% cap...and remember that, more than 95% of all digital licenses are UHF. We urge the Commission to change this rule immediately.

As I stated in my opening remarks, no technology, marketplace changes, statutes, agency regulations or court cases have supplanted, repealed, or vacated localism. Congress **and** the Courts each continue to recognize the importance of localism. No one is suggesting that we change the method of granting and allocating licenses in the public interest and by local community. And when the DC Circuit remanded the national ownership rule to the Commission, it stated, "[I]n sum, we cannot say it is unlikely the Commission will be able to justify a future decision to retain the rule."

Commissioners, the future is here. Act in the name of localism. Preserve the ability of local broadcast companies, like Capitol, to still be serving our communities when my five-year old grandson assumes my title.

Thank you for allowing me to testify today.



COVERAGE YOU CAN COUNT ON

April 2, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: **EX PARTE NOTICE** – Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB 03-15& RM 9832); In the Matter of Digital Must Carry (CS 98-120); 2002 Biennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB 02-277)

Dear Ms. Dortch:

On March 31, 2003, on behalf of Capitol Broadcasting Co., Inc., WRAL-TV and WRAL-DT, Jim Goodmon, John Greene, Chuck deCourt, Tom Beauchamp, and I met with Commissioner Michael J. Copps here in Raleigh, North Carolina. We discussed issues related to the digital transition, demonstrated how WRAL-DT is using its digital spectrum, and gave the Commissioner a tour of our digital facility. We also had some discussions regarding the Commission's Notice of Proposed Rulemaking related to ownership issues, particularly the 35% cap and the counting of UHF stations in connection with the 35% calculation.

If there are questions related to this filing, please contact the undersigned.

All the best,

Capitol Broadcasting Company, Inc.

/s/ Dianne Smith

Dianne Smith
Special Projects Counsel



A CBS affiliate

Receptionist Phone: 919.821.8555

WRAL-TV5, Capitol Broadcasting Company, Inc.

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Melbourne	Washington, D.C.
Miami	West Palm Beach

March 6, 2003

MARVIN ROSENBERG
(202)457-7147
Internet Address:
mrosenbe@hklaw.com

VIA ELECTRONIC FILING

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, SW
Room TW-A325
Washington, DC 20554

Re: EX PARTE NOTICE

In the Matter of 2002 Biennial Regulatory Review – Review of
the Commission's Broadcast Ownership Rules and Other Rules
Adopted Pursuant to Section 202 of the Telecommunications Act
of 1996, MB Docket No. 02-277

Cross-Ownership of Broadcast Stations and Newspapers, MM
Docket No. 01-235

Rules and Policies Concerning Multiple Ownership of Radio
Broadcast Stations in Local Markets, MM Docket No. 01-317

Definition of Local Markets, MM Docket No. 00-244

Dear Ms. Dortch:

On March 6, 2003, on behalf of Capitol Broadcasting Company, Inc., Jim
Goodmon, Dianne Smith and I met with Commissioner Kevin J. Martin and his
Legal Adviser on Media Issues, Catherine Crutcher Bohigan, Commissioner

Jonathan S. Adelstein and his Interim Adviser for Media Issues, Sarah Whitesell, and members of the Commission's Ownership Task Force, Robert H. Ratcliffe, Mania Baghdadi, Royce Sherlock, Timothy May, Judith Herman, Marcia Glauberman, and Jamila Bess-Johnson. The focus of the discussion was the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, in particular the 35% cap and the counting of UHF stations in connection with the 35% calculation.

In the event that there are any questions concerning this matter, please contact the undersigned.

Very truly yours,
HOLLAND & KNIGHT LLP

/s/ Marvin Rosenberg

Marvin Rosenberg
Counsel for Capitol Broadcasting Company

cc: Jim Goodmon
Dianne Smith

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